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US
BANKRUPTCY COURT
PATRICIA GRAY
CLERK

Jasper Benincasa Jr.
Floerfida Benincasa
9359 Roping Cowboy Avenue
Las Vegas, NV 89178

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:	)	BK-S-06-10725-LBR
	)	Chapter 11
USA COMMERCIAL MORTGAGE COMPANY)	
Debtor)	
In re:	)	BK-S-06-10726-LBR
	)	Chapter 11
)	
USA CAPITAL REALTY ADVISORS, LLC,)	
Debtor)	
In re:	)	BK-S-06-10727-LBR
	)	Chapter 11
USA CAPITAL DIVERSIFIED TRUST DEED)	
FUND, LLC,)	
Debtor)	
In re:	)	BK-S-06-10728-LBR
	)	Chapter 11
USA CAPITAL FIRST TRUST DEED FUND,)	
LLC,)	
Debtor)	
In re:	)	BK-S-06-10729-LBR
	)	Chapter 11
USA SECURITIES, LLC,)	
Debtor)	
Affects:)	
<input type="checkbox"/> All Debtors)	
<input checked="" type="checkbox"/> USA Commercial Mortgage Co.)	
<input type="checkbox"/> USA Securities, LLC)	
<input type="checkbox"/> USA Capital Realty Advisors, LLC)	
<input type="checkbox"/> USA Capital Diversified Trust Deed)	
<input type="checkbox"/> USA First Trust Deed Fund, LLC)	

Date: 6/21/06
Time: 9:30 am

**MOTION FOR ORDER AUTHORIZING RETURN OF NON-INVESTED FUNDS
OF JASPER BENINCASA JR. AND FLOCERFIDA BENINCASA
(hereafter "BENINCASA")**

Files a Motion for Order Authorizing Return of Non-Invested Funds of JASPER BENINCASA JR. AND FLOCERFIDA BENINCASA.

This Motion is based upon the Points and Authorities attached hereto.

POINTS AND AUTHORITIES

Facts

The Debtors receipted for \$110,000.00 of BENINCASA's money on the eve of the Chapter 11 filing to be invested in Fiesta Development, Del Valle Isleton (which has been repaid by the borrower according to the Debtor's recent loan summary) and Oak Shores II. The Del Valle loan has been repaid prior to any funds being transferred to Assignor and recordation of a Deed of Trust. See check Exhibit "A" which cleared on April 12, 2006 the banking system the day prior to the Bankruptcy filing. These funds were advanced to no one prior to the filing of April 13, 2006. The Movant bases this on the fact that no Deed of Trust has been recorded and USA Capital has told JASPER BENINCASA JR. that funds were never advanced and are still in the trust account. This is BENINCASA's first investment with USA Capital therefore BENINCASA was never overpaid interest nor does BENINCASA owe anything to USA Capital. The funds were merely receipted for and placed into the trust account on the eve of bankruptcy. They were disbursed to no one and not used for any purpose.

The Law

Debtors and their affiliates are licensed by the State of Nevada Financial Institution Division as mortgage brokers or mortgage agents under NRS 645B.

Escrow Accounts are required under NRS 645B.165 through 175 and commingling is prohibited under NRS 645B.180. BENINCASA is the owner of funds placed into Trust prior to investment. It would appear that under NRS 645B, the Debtor cannot claim that any of "recent check" Represented by Exhibit "A", is property of the estate. Indeed NRS 645B.165 through 180 make it very clear that the funds are trust funds very similar to those in an attorney's trust account and are given the same protection. The law at NRS 645B.180 specifically states that "Money in an impound trust account is not subject to execution or attachment on any claim against the mortgage broker or his mortgage agents." To the extent that Debtors have breached their fiduciary duties, they should be disqualified as servicing agents or indeed, as Debtors-in-Possession and should not be permitted to continue to invest private-investor funds after the filing of chapter 11.

The funds represented by Exhibit "A" do not belong to the Debtor and must be returned. This is clearly the law in our circuit. See Golden Mortgage v. Kennedy, 171 B.R. 79 (B.A.P. 9 Cir.) 1994. These funds are very different from the funds invested by other Investors who have a history with USA Capital and may owe USA Capital for overpayment of interest. The facts herein are very similar to those previously ruled on concerning return of investor's recently deposited easily identifiable funds which were not used for the intended purpose. See Motion for Order Authorizing Return of Investors Certain Escrowed Funds Intended for the Bundy Canyon Project filed herein on April 27, 2006 as Document #68.

BENINCASA funds have been held without being transferred to "Assignors" and no deeds of trust have been recorded. BENINCASA funds should be returned as per:

NRS 645B.175 para. 2 which states:

" Except as otherwise provided in this section, the amount held in trust pursuant to subsection 1 must be released:

- a) Upon completion of the loan, including proper recordation of the respective interests or release, or upon completion of the transfer of the ownership or beneficial interest therein, to the debtor or his designee less the amount due the mortgage broker for the payment of any fee or service charge;
- b) If the loan or the transfer thereof is not consummated, to each investor who furnished the money held in trust; or
- c) Pursuant to any instructions regarding the escrow account."

NRS 645B.175 para. 8 which states:

"Money received by a mortgage broker and his mortgage agents pursuant to this section from a person who is not associated with the mortgage broker may be held in trust for not more than 45 days before an escrow account must be opened in connection with the loan. If, within this 45-day period, the loan or the transfer therefore is not consummated, the money must be returned within 24 hours. If the money is so returned, it may not be reinvested with the mortgage broker for at least 15 days".

Conclusion

The Motion to Allow Payment of Non-Invested Funds should be granted and the Funds not turned over to Assignors should be returned to Movant upon entry of the Order of this Court plus 11 days.

/s/ 
Jasper Benincasa
9359 Roping Cowboy Ave.
Las Vegas, NV 89178
702-413-8624
sv_floerfida@yahoo.com

CERTIFICATE OF SERVICE

I, Jasper Benincasa, hereby certify that a true and correct copy of the foregoing
was forwarded to:

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MATTHEW C. ZIRZOW bankruptcynotices@gordonsilver.com

/s/

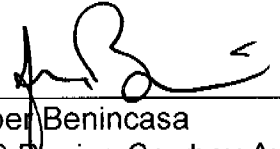
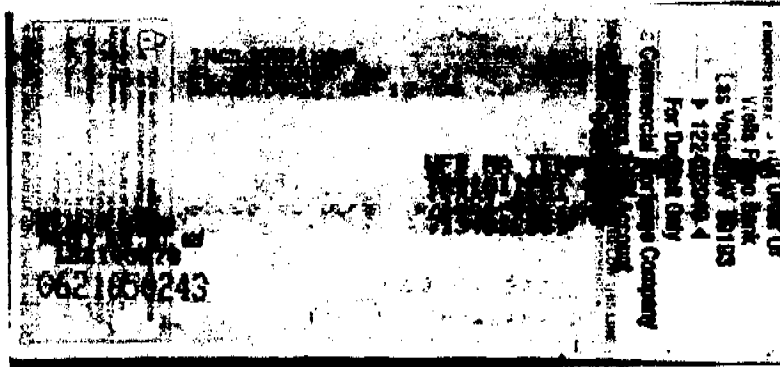
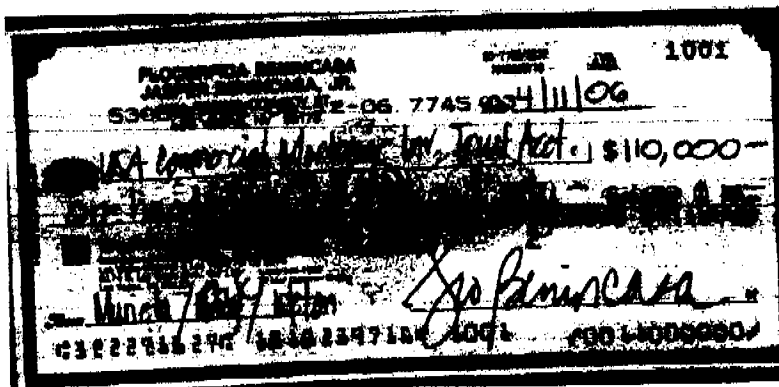

Jasper Benincasa
9359 Roping Cowboy Ave.
Las Vegas, NV 89178
702-413-8624
sv_flocerfida@yahoo.com

Exhibit "A"

Account:	1818239716
Check:	1001
Issued:	April 11, 2006
Cleared:	April 12, 2006
Amount:	\$110,000.00
Deposited into:	Wells Fargo Account
Account Name:	Commercial Mortgage Company Investors Trust Account
Account Number:	0465857146



When Recorded Return To:
 USA Commercial Mortgage Company
 4484 South Pecos Road
 Las Vegas, NV 89121

ASSIGNMENT OF BENEFICIAL INTEREST IN DEED OF TRUST

FOR VALUE RECEIVED, THE UNDERSIGNED ("Assignor") hereby grants, assigns, sets over and transfers to Jasper Benincasa, a married man dealing with his sole and separate property ("Assignee") Fifty Thousand Dollars (\$50,000) of Assignor's undivided beneficial interest in the Deed of Trust (as defined below). As used herein, "Deed of Trust" shall mean that certain Deed of Trust, Assignments of Rents, Security Agreement and Fixture Filing (the "Deed of Trust") dated March 22, 2005, executed by Del Valle Capital Corporation, Inc. as Trustor, Fidelity National Title Company as Trustee, in favor of those persons listed on Exhibit "A" as beneficiaries. The Deed of Trust was recorded on March 30, 2005 as Instrument No. 20050330-1420 in the Official Records of Sacramento County, California. The current Beneficiaries are shown on Exhibit "A" attached hereto.

This Assignment is made together with the Note or Notes therein described or referred to therein, the money due or to become due thereon, together with interest and rights accrued or to accrue under said Deed of Trust.

DATED this 6th day of April, 2006.

ASSIGNOR: Janis N. Romo, the custodian of Mario West Romo, a minor under UTMA

Janis N. Romo
 Janis N. Romo,
 STATE OF Nevada)
 COUNTY OF Clark) ss.

On April 6, 2006, before me, Janet Szabo, a Notary Public in and for said State, personally appeared Janis N. Romo, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Janet Szabo
 Signature

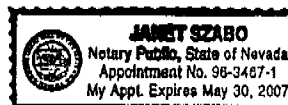


EXHIBIT "B"

When Recorded Return To:
 USA Commercial Mortgage Company
 4484 South Pecos Road
 Las Vegas, NV 89121

ASSIGNMENT OF BENEFICIAL INTEREST IN DEED OF TRUST

FOR VALUE RECEIVED, THE UNDERSIGNED ("Assignor") hereby grants, assigns, sets over and transfers to Jasper Benincasa, a married man dealing with his sole and separate property ("Assignee") Twenty-five Thousand Dollars (\$25,000) of Assignor's undivided beneficial interest in the Deed of Trust (as defined below). As used herein, "Deed of Trust" shall mean that certain Deed of Trust, Assignments of Rents, Security Agreement and Fixture Filing (the "Deed of Trust") dated April 14, 2005 executed by Fiesta Development, Inc. Trustor, Orange Coast Title Company as Trustee, in favor of those persons listed on Exhibit "A" as beneficiaries. The Deed of Trust was recorded on April 15, 2005 as Instrument No. 2005-0298213 in the Official Records of Riverside County, California.

This Assignment is made together with the Note or Notes therein described or referred to therein, the money due or to become due thereon, together with interest and rights accrued or to accrue under said Deed of Trust.

DATED this 7th day of April, 2006.

ASSIGNOR: Phillip N. Ralston and Benita M. Ralston, Trustees of the Ralston Family Trust, dated 5/16/00

Phillip N. Ralston
 Phillip N. Ralston, Trustee

Benita M. Ralston
 Benita M. Ralston, Trustee

STATE OF NEVADA)
) ss.
 COUNTY OF CLARK)

On April 7, 2006, before me, EVELYN M. RULLIS, a Notary Public in and for said State, personally appeared Phillip N. Ralston, Trustee of the Ralston Family Trust, dated 5/16/00, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(Seal)

Evelyn M. Rullis
 Signature
 (additional notary acknowledgment follows)

Fleiss-Muriella



EXHIBIT "C"

When Recorded Return To:
 USA Commercial Mortgage Company
 4484 South Pecos Road
 Las Vegas, NV 89121

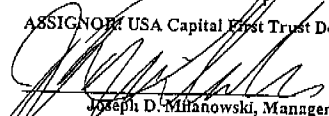
**ASSIGNMENT OF BENEFICIAL INTEREST
 IN DEED OF TRUST**

FOR VALUE RECEIVED, THE UNDERSIGNED ("Assignor") hereby grants, assigns, sets over and transfers to Jasper Benincasa Jr., a married man dealing with his sole and separate property ("Assignee"), Thirty Five Thousand Dollars (\$35,000) of Assignor's undivided beneficial interest in the Deed of Trust (as defined below). As used herein, "Deed of Trust" shall mean that certain Deed of Trust, Assignments of Rents, Security Agreement and Fixture Filing (the "Deed of Trust") dated June 6, 2005, executed by, John E. King and Carole D. King as Trustor, First American Title Insurance company as Trustee, in favor of those persons listed on Exhibit "A" thereto as beneficiaries. The Deed of Trust was recorded on July 1, 2005 as Instrument No. 2005054313, in the Official Records of San Luis Obispo County, California.

This Assignment is made together with the Note or Notes therein described or referred to therein, the money due or to become due thereon, together with interest and rights accrued or to accrue under said Deed of Trust.

DATED this 10 day of April, 2006.

ASSIGNOR: USA Capital First Trust Deed Fund


 Joseph D. Milanowski, Manager

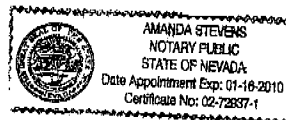
STATE OF Nevada)
) ss.
 COUNTY OF Clark)

On April 10, 2006, before me, Amanda Stevens, a Notary Public in and for said State, personally appeared Joseph D. Milanowski Manager of the USA Capital First Trust Deed Fund, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

(Seal)

WITNESS my hand and official seal.


 Signature



King - Oak Shores II

1

EXHIBIT "D"